

LAW OFFICES

## COHN AND MARKS

STANLEY S. NEUSTADT  
RICHARD M. SCHMIDT, JR.  
JOEL H. LEVY  
ROBERT B. JACOBI  
ROY R. RUSSO  
RONALD A. SIEGEL  
LAWRENCE N. COHN  
RICHARD A. HELMICK  
WAYNE COY, JR.  
MARK L. PELESH  
J. BRIAN DE BOICE

ALLAN R. ADLER  
CHARLES M. OLIVER  
EDWARD N. LEAVY

SUSAN V. SACHS  
JOHN R. PRZYPYSZNY  
A. SHEBA CHACKO\*  
KEVIN M. GOLDBERG\*\*  
\*MEMBER OHIO BAR ONLY  
\*\*MEMBER MARYLAND BAR ONLY

OF COUNSEL  
MARCUS COHN  
LEONARD H. MARKS  
STANLEY B. COHEN

SUITE 600  
1333 NEW HAMPSHIRE AVENUE, N. W.  
WASHINGTON, D.C. 20036-1573

TELEPHONE (202) 293-3860  
FACSIMILE (202) 293-4827

DIRECT DIAL: (202) 452-4814  
INTERNET ADDRESS: [SSN@cohnmarks.com](mailto:SSN@cohnmarks.com)

February 13, 1996

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RECEIVED

FEB 13 1996

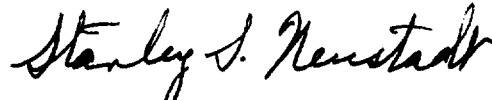
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: MM Docket No. 95-175

Dear Mr. Caton

Transmitted herewith, on behalf of Diamond Broadcasting, Inc., licensee of Stations KOMA(AM), KOMA-FM and KR XO(FM), Oklahoma City, Oklahoma, are the original and four (4) copies of its Reply Comments in the above referenced proceeding.

Very truly yours

  
Stanley S. Neustadt

Enclosures

cc: Gary S. Smithwick, Esq.  
Mr. John A. Karousos  
Vera L. Dunn

DS1/20566-1

No. of Copies rec'd  
List ABCDE

024

**FEB 13 1996**

**BEFORE THE**

**Federal Communications Commission**

In the Matter of

**Amendment of Section 73.202(b),  
Table of Allotments, FM Broadcast Stations.  
(Ada, Newcastle and Watonga, Oklahoma)**

To: Chief, Mass Media Bureau

MM Docket No. 95-175  
RM-8707

DOCKET FILE COPY ORIGINAL

**REPLY COMMENTS OF DIAMOND BROADCASTING, INC.**

Diamond Broadcasting, Inc. (“Diamond”), licensee of Stations KOMA(AM), KOMA-FM and KRXO(FM), Oklahoma City, Oklahoma, by its attorneys, pursuant to Sections 1.415 and 1.420 of the Commission’s Rules, hereby responds to comments of Tyler Broadcasting Corporation (“Petitioner”), licensee of FM Broadcast Station KTLS, Ada, Oklahoma, the proponent of the above-captioned proposal to reallocate Channel 227C1 from Ada to Newcastle, Oklahoma for use by KTLS (and modify the license of KTLS to specify Newcastle as its community of license).

1. Newcastle is located just 15 miles south of Oklahoma City and contiguous to the Oklahoma City Urbanized Area (a proposed Newcastle station would provide a 70 dBu signal over 95 percent of the Oklahoma City Urbanized Area); Newcastle's population of 4,214 is less than 1 percent the population (444,719) of Oklahoma City. Diamond Comments, pp. 2-3. Despite the disruption in service to the existing listeners of KTLS which would result from the proposed reallocation of FM Channel 227C1 from Ada to Newcastle, it is Petitioner's contention that such

proposal would serve the public interest because it would provide a first local transmission service to Newcastle.

2. The Huntington Doctrine precludes grant of a dispositive preference under Section 307(b) of the Communications Act of 1934, as amended, in circumstances where a first local transmission service is proposed for a community located in or near a large metropolitan area, the proposed community is to some extent dependent upon the larger central community and the proposed service area substantially encompasses the metropolitan area. Huntington Broadcasting Co. v. F.C.C., 192 F.2d 33, 35 (D.C. Cir. 1951); accord Debra D. Carrigan, 100 FCC2d 721, 728-31 (Rev. Bd. 1985), review denied 104 FCC2d 826 (1986), aff'd memo. sub nom. Bernstein/Rein Advertising v. F.C.C., 830 F.2d 1188 (D.C. Cir. 1987). Moreover, the Commission has recently ruled that where a station seeks to change its community of license to one which is outside an urbanized area and would place a city grade, 70 dBu, signal over 50 percent or more of the urbanized area, which is the case here, the proponent of such proposal will be required to provide the same showing as currently required for those parties seeking to move to a community within an urbanized area. See, Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). Accordingly, the fact that Newcastle is outside of the Oklahoma City Urbanized Area is not of decisional significance and the Huntington Doctrine is relevant.

3. While there is no set of indicia of interdependence that must be shown in order to invoke the Huntington Doctrine exception, when the community at issue is smaller and close to the central city, a strong showing of interdependence between the specified community and the central city is not required. See Faye and Richard Tuck, Inc., 3 FCC Rcd 5374, 5378 (1988). Indeed, Tuck

stands for the proposition that granting a dispositive preference to an applicant proposing a first local service near a metropolitan center has the potential to produce anomalous results. Id.

4. Petitioner has adduced evidence designed to establish that Newcastle is a community independent of Oklahoma City. Indeed, that evidence is comparable to the evidence on which the Commission based its determination that Headland is a community independent of Dothan in Headland, supra. However, this showing is grossly inadequate when comparing Newcastle and Oklahoma City. The only meaningful comparison is not between Newcastle and Headland, but between Newcastle and Richmond, the city which was held not to have an independent need for a wide area station RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990). Richmond is 16 miles from San Francisco; Newcastle, 15 miles from Oklahoma City. Richmond's population was 74,676; Newcastle's 4,214. Without burdening this document unduly by listing each of them, it is abundantly clear that Richmond had all of the indicia of community status that Newcastle has, but in much greater abundance. Incidentally, neither has a daily newspaper. The Newcastle labor force (see Diamond original Comments) is so small that it is irrelevant where they work. The Commission overruled the Review Board in holding that Richmond, a city with a population larger than most communities in this country, which was more than one-tenth the size of the principal city, was denied a station of its own because any realistic appraisal showed that to allot a station to Richmond would, in view of its relationship to San Francisco, have been an anomalous result, and would promote even more flight of stations to the larger centers of population. None of this was true in the case of Headland. And it would surely be "anomalous" to award a station to Newcastle, which is a very small community, less than one percent as large as its principal community. The Newcastle

proposal would provide service to Oklahoma City equal to that required of a station licensed to Oklahoma City.

5. The relationship between Newcastle, Oklahoma and the Oklahoma City metro area presents an even stronger case than does RKO General, Inc. (KFRC) for finding that Newcastle is not entitled to a first local transmission service preference. More importantly, if awarding a first local service preference for a proposed allotment to a community in an urban area gives even the appearance of condoning an artificial and unwarranted manipulation of the Commission's policies, no such preference may be awarded and the Commission must consider the proposed allotment as simply an additional allotment to the urban area. Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7096, 7099 (separate statement of Commissioner Quello) (1990). Petitioner's proposal does not pass muster; it contravenes Section 307(b) of the Act and gives the appearance of trying to manipulate the Commission's policies. Accordingly, Petitioner's proposed reallocation must be denied.

Respectfully submitted

DIAMOND BROADCASTING, INC.

By: Stanley S. Newstadt  
Stanley S. Newstadt  
Richard A. Helmick

COHN AND MARKS  
1333 New Hampshire Ave., Suite 600  
Washington, D.C. 20036  
(202) 452-4830

Its Attorneys

February 13, 1996

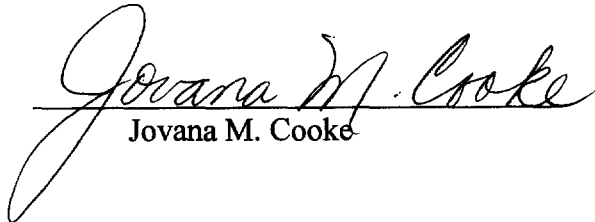
CERTIFICATE OF SERVICE

I, Jovana M. Cooke, a secretary in the law firm of Cohn and Marks, hereby certify that I have, this 13th day of February, 1996, sent by U.S. mail, postage prepaid, or by hand delivery, as indicated, the foregoing **REPLY COMMENTS OF DIAMOND BROADCASTING, INC.** to the following:

Gary S. Smithwick, Esq.  
Smithwick and Belendiuk, P.C.  
1990 M Street, N.W.  
Suite 510  
Washington, D.C. 20036

John A. Karousos\*  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 8322  
Washington, D.C. 20554

Vera L. Dunn  
Station KIMY  
Box 221  
Watonga, OK 73772

  
Jovana M. Cooke

\*By hand delivery